IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CRIMINAL APPEAL NO.51 OF 1994

Shivaji Sambhaji Giranje — Appellant (Org.Accd.No.2)

Vs.

The State of Maharashtra — Respondent

Mr.Umesh Mankapure h/f. Mr.R.V.More for appellant.
Ms.V.R.Bhonsale, APP for State.

CORAM: S.S.PARKAR & S.R.SATHE,JJ.

October 27, 2004.

ORAL ORDER

1. This appeal is filed for return of property i.e. gun which was attached.

2. The appellant is original accused no.2 in Sessions Case No.157 of 1989 in which 17 accused were prosecuted for offences under Sections 147, 148, 336 read with section 149 of IPC and for offence under section 337 read with section 149 of IPC, for offence under section 307 read with Section 149 of IPC and for offence under Section 25(1) (c) of the Arms Act. By the judgment and order dated 23rd January 1991 delivered by the IV Addl. Sessions Judge, Solapur all the accused were acquitted as the parties had compromised and, therefore, the witnesses turned hostile and did not support the prosecution.

3. By the aforesaid order the trial Court had ordered confiscation of the gun attached during investigation and, therefore, the present appeal is filed by the appellant who was original accused no.2 taking exception to the direction for confiscation of gun and for return of the gun to him on the ground that he is the licensed gun holder and he had applied for renewal of the licence.

4. In the judgment while narrating the facts the trial Court has observed that there was allegation of abusing and stone throwing and the accused having assaulted the complainant and his friends with stones and also fired shots from the gun to kill the witnesses. In paragraph 18 of the judgment before the operative order the trial Court has observed as follows:

> "18. As regards the muddemal property the stones have to be destroyed. As regards the gun there is no balastic report on record. The accused persons do not claim ownership on the same. No licence for the same is proved either. Therefore, I think the same will have to be confiscated to the State."

5. Thus there was allegation of shots having been fired from the gun. The ballistic report was not

produced on record. None of the accused had claimed ownership of the gun nor any licence was produced. Moreover from the panchanama of seizure of the gun (Exh.22) it appears that the gun in question was produced by one Chhandar Tatya Giranje whose name does not appear in the list of accused who were prosecuted in the above case. It was not produced by the present appellant who was original accused no.2 nor it was recovered from his possession. In view of the above, the gun cannot be directed to be returned to this appellant.

6. In the circumstances, the appeal is liable to be dismissed and the same is dismissed. It would be open for the appellant to move the appropriate authority in connection with the said gun as per the provisions of the Arms Act.

(S.S.PARKAR,J.)

(S.R.SATHE,J.)